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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/164683

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on April 14, 2015, at Sheboygan, Wisconsin.

NOTE: The record was held open to obtain letters of guardian ship and to give OIG an opportunity to review Exhibit 2 - a physical therapy evaluation dated February 23, 2015. The letters of guardianship have been marked as Exhibit 5 and the OIG's written response has been marked as Exhibit 6.

The issues for determination are whether Petitioner's appeal is timely and whether his request for a Dynamic Stander meets approval criteria.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.
2. On January 12, 2015, United Seating & Mobility d.b.a. Numotion (herein after referred to as Numotion) submitted, on behalf of the Petitioner, a request for prior authorization of a Dynamic Stander, a pair of wheels, an arm prompt set and a pair of sandals with wedges at a cost of \$4,305. (Exhibit 4, pgs. 5 and 6)
3. At the hearing, the Petitioner's representative withdrew the request for coverage of the wheels, which were priced at \$1,255.00. (Testimony of [REDACTED])
4. On January 23, 2015, the Department of Health Services (DHS) sent the Petitioner and Numotion notices advising them that the request for the Dynamic Stander and accessories was denied. (Exhibit 4, pgs. 17-24)
5. Numotion, on behalf of the Petitioner, filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 14, 2015.
6. The Petitioner previously used a stander when receiving physical therapy at school, but has not had any physical therapy or access to a stander since graduating high school in June 2014. (Testimony of Petitioner's mother)
7. Petitioner is 22 years old with a diagnosis of Developmental Coordination Disorder and Abnormality of gait. He is able to ambulate 50 feet with assistance, but has experienced falls due to poor balance. (Exhibit 4, pg. 8)

### DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the DHS concerning medical assistance benefits must be filed within 45 days of the date of the action. Wisconsin Stat. §49.45(5); Income Maintenance Manual §3.3.1 A negative action can be the denial of an application, or the reduction of benefits, or as in this case, the denial of a requested piece of medical equipment.

In the case at hand, the date of negative action was January 23, 2015, the date DHS mailed the notice denying approval of the Dynamic Stander. The Petitioner's appeal was filed on March 14, 2015, 50 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

Even if jurisdiction did exist, I would find that DHS correctly denied authorization for the stander.

Wis. Admin. Code DHS §101.03(5) defines "durable medical equipment" as, "equipment which can withstand repeated use, is primarily used for medical purposes, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home."

It appears undisputed that the Dynamic Stander is a piece of durable medical equipment covered under Wis. Admin. Code DHS §107.24(2)(c), as it could be argued to be a piece of physical therapy adaptive equipment intended to improve the Petitioner's ability to independently ambulate around his home.

Per Wis. Admin. Code DHS §107.24(3)(a), items listed in the Wisconsin Durable Medical Equipment (DME) <sup>1</sup> and medical supplies indices as needing prior authorization, must in fact, go through the prior

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<sup>1</sup> A link to the DME Index may be found at:

authorization process. According the DME Index, purchases of standing frames, like the Dynamic Stander must receive prior authorization for coverage.

Petitioner has the burden to prove, by a preponderance of the credible evidence, that his request for prior authorization of the Dynamic Stander meets the approval criteria. Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003)

When determining whether coverage of the Dynamic Stander may be approved, the DHS consultant must determine whether it is medically necessary as defined by Wis. Admin. Code, § DHS 101.03(96m).

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

DHS also applies policy standards established in the on-line provider handbook<sup>2</sup> to ascertain whether use of a stander is appropriate:

Topic #1851

### **Standing Frames**

Prone standers, supine standers, tilt tables, and standing frames are devices that allow a person to stand unaided. This does not include orthotics, prosthetics, various transfer devices, or wheelchairs.

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[https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/Provider/medicaid/MedicalEquipmentVendor/resources\\_25.htm.spage](https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/Provider/medicaid/MedicalEquipmentVendor/resources_25.htm.spage)

<sup>2</sup> The on-line provider handbook can be viewed on-line at:

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks> ; durable medical equipment; home health equipment; standing frames.

Key elements for the approval of PA requests for prone standers, supine standers, tilt tables, and standing frames include the following:

- Standers are generally appropriate only for children.
- Allowable diagnoses are cerebral palsy, spina bifida, developmental delay, congenital anomalies, brain injury, meningomyelocele, and muscular dystrophy.
- **The member must be involved in an active PT program.** The program must include specific and measurable goals for significant improvement (not maintenance) expected **in the areas of standing pivot transfers and/or ambulation skills.**
- The member must be unable to work on the goals specified in the preceding point without the assistance of two people.
- Documentation must include a written carry over plan for caretakers to actively work toward specific therapy goals.
- Documentation must include the stander's brand and model number. Additional positioning features, for which additional reimbursement is requested, must include manufacturer information clearly documenting that these features are not standard with the basic stander.
- The stander must be size-appropriate for the member. Growth features are not medically necessary.
- Motorized, hydraulic, or electric standers, and standers with wheels for mobility will not be approved because these features are not medically necessary.
- Multi-positional standers are considered institutional equipment and will not be approved.

*Note:* The specific code for the stander's style and size must be used. Miscellaneous or "not otherwise classified" codes will not be approved.

*Emphasis added*

DHS argues that because the Petitioner can already ambulated 50 feet with assistance, he does not need the stander and that it is not the most appropriate supply or level of service that can effectively be provided. Put more simply, OIG was not convinced that the Petitioner would benefit from the stander and questioned whether the Petitioner would benefit more from a course of physical therapy that establishes an active home exercise program.

Petitioner's guardian testified that the Petitioner has been without physical therapy since he graduated in June 2014, that his contractures have gotten worse and that he needs the stander to address this issue, because his ability to ambulate has diminished.

Although the Petitioner has had a physical therapy evaluation, that evaluation has not put the Petitioner's condition in context of where he was, when he received regular physical therapy and used a stander, during his time in school. In the absence of that comparison, it is difficult to know whether Petitioner has experienced a significant deterioration in his condition and it is difficult to know whether the deterioration, if any, is due to the lack of therapy in the stander.

I note, that according to the third bullet point of topic 1851, above, that in order for a stander to be approved, the requester must be actively participating in a physical therapy program. Given the testimony of Petitioner's mother that the Petitioner has not received physical therapy since graduation in 2014, the request for a stander cannot be approved at this time.

Accordingly, it is found that DHS was correct in its determination that Petitioner has not established the requisite medical necessity, as it is defined by Wis. Admin. Code, § DHS 101.03(96m).

Petitioner might want to consider the DHS consultant's suggestion of participating in physical therapy and establishing a good home exercise program. If the stander is still needed at that time, the Petitioner may have Numotion submitted a new request for prior authorization of the stander.

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

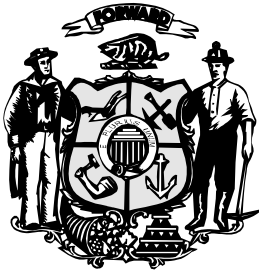
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 30th day of April, 2015.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 30, 2015.

Division of Health Care Access and Accountability  
[ted.malkowski@numotion.com](mailto:ted.malkowski@numotion.com)